

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **SEN. ALVIN ELLIS**, on January 29, 1999 at 8:00
A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 111, 1/20/1999; SB 270,
1/25/1999; SB 274, 1/25/1999
Executive Action: SB 205, SB 206, SB 270, SB
208, SB 175

HEARING ON SB 274

Sponsor: SENATOR BILL WILSON, SD 22, GREAT FALLS

Proponents: John Lawton, City Manager, City of Great Falls
Andy Poole, Department of Commerce
Terry Pehan, Great Falls Chamber of Commerce

Gary Blair, Spaceport Montana
Evan Barrett, Montana Economic Developers
Association
Bob Crane, Hardin Chamber of Commerce
Trey Harbert, Great Falls Chamber of Commerce
Jerry Thomas, Big Sky Economic Development
Association
Dennis Burr, Montana Taxpayers Association
Chris Gallus, Montana Chamber of Commerce

Opponents: None

Opening Statement by Sponsor:

SEN. BILL WILSON, SD 22, Great Falls, brought **SB 274**, a bill which would, if adopted, exempt the aerospace industry from the state's 6% business equipment tax. He said that this bill was brought forth to help lure the Venture Star Spaceport to Montana, and if we don't allow this exemption, Montana will be eliminated from the running.

SEN. WILSON said Venture Star is a \$4.5 billion spaceship that is slated to be developed in order to replace the aging space shuttle. It is a single-stage-to-orbit spacecraft, in that it does not drop booster rockets or fuel tanks upon takeoff. It is an unmanned, remote-controlled vehicle, and can be launched over land. The Venture Star is privately financed and is a for-profit venture. It is designed to lower the cost of putting payload into space. **SEN. WILSON** said this is a \$77 billion industry, and projections say that by 2003, there will be 60 launches needed per year for this sort of activity. Currently it costs about \$10,000 per pound of payload; Venture Star will be able to reduce this cost to about \$1,000 per pound. It burns a mixture of hydrogen and oxygen and leaves very little pollution, making it environmentally friendly.

SEN. WILSON said there are four sites in Montana that are vying for the Venture Star project, one in Hardin, one in Glasgow, and two in the Great Falls area, one at Manchester and one at Malmstrom Air Force Base. He said that if Montana should land this mission, it would mean hundreds, if not thousands, of good-paying jobs, including spin-off high-tech jobs that would be related to this project.

SEN. WILSON said Montana is competing with 14 other states, many of which are doing anything necessary to attract this project. However, Montana has these strengths: 1) our uncongested air space; 2) our sparse population; 3) our high altitude; 4) our northern latitude; and 5) the fact that we were chosen for the

landing of the X-33. He provided a handout on the X-33, **EXHIBIT (tas23a01)**, which is a half-scale prototype of the Venture Star.

Proponents' Testimony:

John Lawton, City Manager of Great Falls, said that Great Falls has two sites that are being proposed for the Venture Star program. He said for any of Montana's sites to be competitive, as a state we are going to offer some things to Lockheed Martin in order to have a realistic shot at this project. He said **SEN. WILSON** listed our natural advantages, and Great Falls offers a full-service community very close to both sites in their area.

Mr. Lawton said, however, that our natural advantages will not be enough. He said we need to remove the business equipment tax from space vehicles and related facilities. He said there are two other legislative issues that will be coming forward, one which will extend industrial development tax increment programs to aerospace and related kinds of projects, and the other is a proposal for \$20 million of state General Fund bonds to be issued to support infrastructure which will be supported by the revenue streams in the income tax from some of the new workers. He said Montana is one of 15 states competing for this project, and we need these tax incentives.

Andy Poole, Deputy Director, Department of Commerce, said that he is representing the Administration. He said the Governor's Strategic Plan includes a strategy that has to do with Venture Star. If Montana is not selected for this project, this bill has no meaning; however, if Montana is selected, we will forego the business equipment tax for the Venture Star project, but there are many collateral businesses and activity that will go along with Venture Star and will have a significant impact on Montana and the area that is chosen.

Mr. Poole said there is an expected 300 to 400 jobs that will be created as a result of the Venture Star project, and an estimated 3,000 to 4,000 jobs that would be created as a result of having the Venture Star project in Montana. That will result in a significant increase in income taxes for Montana. He said that this project could mean a tremendous benefit to Montana in the future and will change the face of our industrial development. He urged support of **SB 220**.

Terry Pehan, President, Great Falls Chamber of Commerce, said he stands in support of this proposed legislation. He said Montana's involvement in this X-33 project and the Venture Star project started two years ago. He said Montana does have an

exceptionally good opportunity for this project which stems from our involvement with the Lockheed Martin people over the last two years. Regarding Venture Star, **Mr. Pehan** said one-half of the proposed launches are designed to go into the polar orbit, which Montana is most ideally suited to support. Those launches are designed to support not only satellite insertion but also satellite retrieval. He said the polar orbit is also the primary launch platform for the international space station. He said it is also impossible to predict what type of spin-off industries might come out of this project, but they will be a tremendous economic and development opportunity for Montana.

Gary Blair, Spaceport Montana, Incorporated, Hardin, distributed three handouts on the X-33 and Venture Star, **EXHIBIT(tas23a02)**, **EXHIBIT(tas23a03)**, and **EXHIBIT(tas23a04)**, and said that without **SB 274** Montana will not be competitive as one of the two spaceports that will be built in the next few years. He said it is a phenomenal opportunity for Montana and will help reverse the economic trend that we are now experiencing.

In regard to the X-33, **Mr. Blair** said it is a half-scale demonstrator that will be used to evaluate the Venture Star spaceship and whether or not it will fly. He said Venture Star will change how we go to and from space and, in so doing, will change the world. He said that Venture Star represents a fundamental change in how the federal government procures space transportation services, moving from its traditional role as a developer and operator of space transportation systems toward a role as a customer procuring launch services from a competitive marketplace. It is the privatization and commercialization of space primarily in the lower orbit, which extends up to 400 miles above the earth's surface.

Mr. Blair said that Venture Star will also be a primary part of the international space station program, and in addition, there is a market of from 1,400 to 1,800 satellite launchings between 2004 and 2020. Venture Star will also reduce the cost of lifting a pound of payload to orbit to \$1,000 per pound versus the \$10,000-plus per pound that it costs for the current space station. Each of these vehicles can lift approximately 51,000 pounds. It is estimated by Lockheed Martin that there will be approximately 85 launches per year for the next 20 years, with 40 to 45 of those launches in a northern latitude.

Mr. Blair closed by saying that Venture Star is a great opportunity for Montana. He said this project will happen with or without us, but Montana can be extremely competitive with this bill.

Evan Barrett, Montana Economic Developers Association, said that decisions like this are made by major companies based upon comparative and competitive advantages that an area has. The comparative advantage is very clear, and that is they are looking at the flat, open spaces with sparse populations. The other thing is the competitive advantage, which this bill addresses. If the business equipment tax stays on this project, Montana will be at a significant competitive disadvantage. This bill will strengthen Montana's competitive advantages. **Mr. Barrett** said that the exemption proposed in this bill does not affect the existing tax base. It is a no-risk situation. If the applications all fail, nothing is lost. He also suggested that there will be as much spin-off growth activity, and even more secondary growth activity as from the main core of the project. He urged support.

Bob Crane, President, Hardin Area Chamber of Commerce, said that the Hardin area is suffering economically, as is most of Eastern Montana. He read a statement regarding Montana's economy. "The Center for Enterprise Development ranked Montana first in the U.S. for quality of work force; however, Montana ranks last in the nation for low average work force wages and 46th in per capita income. Other challenges are a shift towards lower paying service industry jobs, a growing population disparity between the east and west regions, and a loss of college-educated native Montanans." He said it is time Montana made some changes conducive to bringing industry into this state. The Venture Star program would be a great opportunity for Montana, and he urged passage of this bill.

Trey Harbert, Great Falls Chamber of Commerce, said that in the mid-1980s he was project manager for the super conducting supercollider in Texas and helped put that program together. He said that Montana has a good chance to bring the Venture Star project here, but that this tax incentive is imperative to do that.

Jerry Thomas, Executive Director, Big Sky Economic Development Authority, and Yellowstone County, said that his organizations feel that this is so important to Montana, it is essential that everyone band together to support it, regardless of the site chosen. They support this bill.

Dennis Burr, Montana Taxpayers Association, said his organization has long advocated reducing taxes on business equipment, although they have opposed on many occasions specific incentives, particularly when they were designed to draw businesses into Montana that would compete with current businesses that have to pay the particular tax. In this instance, Montana will not be in the

consideration if this tax is imposed, and it is not a project that will compete with existing Montana businesses, and for that reason Montana Taxpayers support this bill.

Chris Gallus, Montana Chamber of Commerce, said they are in favor of anything that supports and attracts industry to Montana. This bill solves a major competitive disadvantage for this specific project while we seek a permanent solution to this problem for all Montana businesses.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. STANG said that as he reads the bill, it appears on page 3, line 13, that the way it is worded, it only applies to market value of tools owned by the taxpayers that are customarily hand-held. **Mr. Heiman** said that subsection (r) has two pieces, (i), which is the hand tools, and (ii), which would be the space vehicle. The property in subsection (r) is exempt from business personal property taxes, and it has two subsections, (i) and (ii), which is basically to prevent having to put "as provided in subsection (r)."

SEN. GLASER referred **Don Hoffman, Department of Revenue**, to page 3, line 16, the word "support." He asked how encompassing that word is. **Mr. Hoffman** said that in the fiscal note, which the committee has not yet received, the Department of Revenue had raised a couple concerns with the wording of the bill, and that was one of their questions. Also, they raised the concern that if there are things that are currently related to the manufacture of space vehicles, would they be exempt also. **SEN. GLASER** then asked if this could be too encompassing and involve people or businesses not directly involved in the project, and **Mr. Hoffman** said that the argument could be made that if they are in support in some way as a subcontractor of the project, that they could be included.

SEN. DEPRATU referred to **SEN. WILSON'S** statement that this is privately financed and for-profit company, and he said someone else gave testimony that there would be a lot of spin-off opportunities for developing businesses in the state. He asked if **SEN. WILSON** really believed that the business equipment tax would be an inhibitor to attracting this project into the state, and **SEN. WILSON** said that comparing Montana to the other 14 states in competition, most of them are more friendly to something like this than we are. He said Montana has to have this incentive in order to be competitive. **SEN. DEPRATU** asked if he felt that it would necessarily be important that spin-off businesses get the equipment tax break, and **SEN. WILSON** said he believes that spin-off businesses will be there with or without the business equipment

tax. **SEN. DEPRATU** said that the committee had heard testimony on other issues that \$100,000 should be the limit, and this will probably run into the billions, and **SEN. WILSON** said it is estimated at \$4.5 billion for Venture Star. **SEN. DEPRATU** said that the committee had heard testimony that if we get over \$100,000 we would be creating corporate welfare, and he asked if that was the case in this instance. **SEN. WILSON** said that when you are attracting a specific project, he doesn't see it as corporate welfare.

SEN. DEVLIN asked **SEN. WILSON** if he had seen a fiscal note on this bill, and he answered that he had not. **SEN. WILSON** said he hadn't really thought of this as having fiscal impact because traditionally fiscal impact is something where we are taking money out of our limited resources, and this does not do that. **SEN. DEVLIN** then asked **Mr. Lawton** what the other states are doing to entice this project, and he said he only knew what some of the states were doing, but that in some cases there is a great deal of no-cost land available, as in Nevada. The state of Idaho has already appropriated \$2 million for the upfront costs of this project. He said each state will be doing something different as a package of incentives. **Mr. Blair** added that Idaho's site is on a federal facility already, the old nuclear agency. New Mexico has spent \$1.5 million to date, and has their spaceport license. The White Sands proving ground is located there, also. However, he said he still thinks that Montana has a real chance of enticing this project to the state.

SEN. BOHLINGER asked if **Mr. Blair** had said there would be two spaceports, and **Mr. Blair** said that that was correct, one in the northern latitude and one in the southern latitude, and each spaceport will have two launch facilities. He said Cape Kennedy will continue to do the human side of space flight; however, after 57 flights, Venture Star will carry humans because it will be taking over for the space shuttle.

SEN. DEVLIN asked **Mr. Harbert** how much Texas spent to promote the super collider project, and he said he thought the seed money was probably about \$5 million just to prepare the proposals. It required a combination of the support of the legislature, the support of the Congressional delegation and the business community in the state of Texas. He added that Idaho will be a very aggressive opponent for Montana on this particular project.

SEN. ELLIS asked **Mr. Hoffman of the Department of Revenue** whether or not there will be a fiscal note prepared, and **Mr. Hoffman** said that there is a fiscal note, but there are no dollars associated with the fiscal note because, as was pointed out, with respect to

this project which the bill is intended for, it is not being taxed now, so there would be no impact.

Closing by Sponsor:

SEN. WILSON said that the prospect of having a clean, high-tech industry come to Montana is very exciting. He said that Montana is seriously in the running for this project, but some of the other states have come up with some unusual and inventive enticements. He stressed that this is not a Great Falls project, or Hardin or Glasgow, it is a Montana project.

In addition, **SEN. WILSON** said that the landing of the X-33, which will hopefully be in late summer or fall, will bring an influx of 40,000 people. He stressed again that if this tax incentive should fail, Montana would be out of the running.

HEARING ON SB 270

Sponsor: SENATOR GERRY DEVLIN, SD 2, TERRY

Proponents: Dennis Burr, Montana Taxpayers Association
Tim Burton, Chief Administrative Officer, Lewis &
Clark County
Gordon Morris, Montana Association of Counties

Opponents: None

Opening Statement by Sponsor:

SEN. GERRY DEVLIN, SD 2, Terry, presented **SB 270**, as a bill that will have the Department of Revenue reimburse those counties in which they do business and have office space in the courthouse for that office space. He said the fiscal note is quite significant, but it specifies \$5.13 per square foot, which seems fairly high.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association, said this bill makes sense. He said the original language of the bill was created in 1973 after the 1972 Constitution gave the state the authority to do the assessments. At that time, each county still had an elected county assessor and the Department of Revenue started paying county assessors but they remained elected for a number of years. As things have changed, county assessors have pretty much been phased out, and the appraisal and assessment process is conducted strictly by Department of Revenue employees that have no particular attachment to county government. Because of that,

it seems like the proper thing that counties be compensated for the space the Department of Revenue uses.

Tim Burton, Chief Administrative Officer, Lewis & Clark County, said they are in support of this bill. He said they believe that this is an equity issue.

Reiterating what **Mr. Burr** testified to, **Mr. Burton** said that there was a transfer of responsibilities in the early 1970s, and that relationship, although different, is still very important between the state of Montana and the county governments. He said the argument against this may be that the state is actually doing business for the counties, but he said if you look at a property tax bill, you will notice that 70% to 75% of that bill represents the state of Montana, primarily schools, with the other 25% going to cities and counties.

Mr. Burton said that Lewis & Clark County pays \$35,000 a year to house the Department of Revenue in our city-county building. He said that equates to about one-half mill, which on the state level is not very significant; however, on the county level, especially with the present restrictions, it is very significant and comes right out of the county's General Fund. He also said that he thinks that the amount of \$5.13 per square foot comes from what the Department of Administration charges other state agencies, and Lewis & Clark County would be happy to stay at that amount, even though they charge other county departments more per square foot than that. He urged passage of **SB 270**.

Gordon Morris, Montana Association of Counties, said that the Association urges support of **SB 270**.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. STANG said that in rural Montana the counties have been fighting to keep the Department of Revenue in their courthouses, but he wondered if it would be possible to prevent the Department from removing their presence from the courthouse just because they are going to be charged rent, and **SEN. DEVLIN** said an amendment like that would be acceptable, but he thinks that in other sections of law they are required to have a presence in a county.

SEN. GLASER asked **Mr. Hoffman of the Department of Revenue** about the assumptions on line 4 of the fiscal note. It says there are 140,000 square feet rented out, and then it says there are 86,000 square feet that are not paid for. **SEN. GLASER** wondered if that

meant 140,000 that are being paid for and 86,000 that are not being paid for. **Mr. Hoffman** replied that there are some places where the Department is out of the courthouse and they are paying rent, such as in Gallatin County and Cascade County. **SEN. GLASER** then asked if the Department was paying rent in communities where they are not in the courthouse, but they are not paying any rent to counties for courthouse space, and **Mr. Hoffman** agreed that if they have to move out of the courthouse, they would then have to pay rent for private space. **SEN. GLASER** then asked if they were paying any counties rent, and **Mr. Hoffman** said that in some instances they have helped counties do refurbishing, but there is no authority for the state to pay rent on a regular basis.

SEN. GLASER then referred to line 5, where it refers to the rent per square foot of the 86,606 "will be" \$5.13, and then said that the bill says that "it not exceed the rental rate that is the charge charged to other agencies." **Mr. Hoffman** said that it was assumed for the purposes of the fiscal note that the state would be charged at the maximum rate, if that was authorized by the legislature.

SEN. ELLIS asked **Mr. Burton** to clarify his statement that 80% of the tax bill is collected for the state, and **Mr. Burton** replied that the 70% that represents schools is the equalization mills, as well as the county mills and the school district mills, and the bulk of those mills obviously go to the local and county school districts; but combined, that does represent around 70% of the total.

Referring to the elected treasurers on the county level, **SEN. ELLIS** said that they do the same job in relation to collecting revenue as the assessors and appraisers do in that they are all a vital part of getting this money assembled. He asked how **Mr. Burton** perceived that. **Mr. Burton** said that there is a fundamental difference in that the appraisal and assessment office deals with the valuation and the overall application of value towards the various classifications of property through a county. He said that it does vary from county to county whether you have standard accounting principles or have adopted the alternative accounting principles, but that the treasurers run the accounting portion of a county, as well as collect all revenue throughout the entire enterprise, which in the case of Lewis & Clark County equates to about 350 different funds.

Closing by Sponsor:

SEN. DEVLIN thanked the committee for a good hearing, and said he would appreciate being able to take a look at any amendments that may be recommended by the committee before it is acted on.

HEARING ON SB 111

Sponsor: SENATOR BOB DEPRATU, SD 40, WHITEFISH

Proponents: Dennis Burr, Montana Taxpayers Association
Steve Turkiewicz, Montana Auto Dealers Association
Geoff Feiss, Montana Telecommunications Association
Mike Strand, Montana Independent Telecommunications
Systems
Chris Gallus, Montana Chamber of Commerce
Riley Johnson, National Federation of Independent
Businesses

Opponents: M. S. Eaton, Business & Consumers Bureau of Montana

Opening Statement by Sponsor:

SEN. BOB DEPRATU, SD 40, Whitefish, presented SB 111, which is by request of and came out of the Revenue Oversight Committee, and is an act exempting intangible personal property from property taxation. He said the purpose of this bill is that the Department of Revenue felt that they were not fulfilling their responsibilities that they were granted by law of taxing intangibles, and that they were not presently being taxed. Those types of intangibles include basically what are listed in the new section of SB 111.

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association, said that SEN. DEPRATU mentioned that this concept was originally brought to the Revenue Oversight Committee by the Department of Revenue. He said he was aware that the Department had been criticized for not taxing intangibles, and that criticism was based on the fact that there is no exemption for intangible property in Montana law. The Department's intention, as explained to the Oversight Committee at the time, was that they would prepare rules to tax intangibles which would become effective January 1 of 1999 and allow the legislature to determine whether they wanted all those intangibles to be taxed or whether they wanted to change the law to exempt intangible property. Mr. Burr said that the Oversight Committee chose to exempt intangibles which aren't currently being taxed rather than leave the law alone and try to pick up those intangibles.

Mr. Burr said that the fiscal note, reflects that the impact of exempting intangibles is really on centrally assessed properties. The reason for that is that in the method of assessing those

companies, capitalizing income, looking at the total value, their intangibles are in that total value, whereas main street businesses are generally assessed on the basis of replacement cost or property depreciated, and intangibles are not in that value. However, since intangibles are included in the centrally assessed valuations now and are taxed, the fiscal note is somewhere around a \$10 million decrease in taxes on those companies.

Referring to centrally assessed properties, **Mr. Burr** said that in 1997, they paid about \$173 million in property tax, which is almost 22% of total property taxes collected in Montana. Intangibles, according to this estimate, are about 6% of current utility valuations. That represents about 1.4% of total property tax collections which would be spread across the state wherever the allocations of utility values are put.

Mr. Burr said this is not a problem that is unique to Montana, that other states have also faced this problem because of the equal treatment problem between the utilities which are taxed on intangibles and other properties that are not. Utah, Idaho and Washington have passed legislation to stop taxing of utilities. It is an equal protection problem similar to some extent to the business equipment tax. He said if some properties are not going to be taxed for intangibles, it isn't equitable to tax intangibles of utilities. He urged serious consideration of this bill.

Steve Turkiewicz, Montana Auto Dealers Association, said that he would ask the committee to consider carefully the list of intangible properties that would become taxed that are not being taxed presently. He said the impact on jobs and the economy and on jobs and incomes by the ripple effect could be long reaching. He said the Auto Dealers feel this is a good bill and urged support.

Geoff Feiss, General Manager, Montana Telecommunications Association, said his organization represents large and small commercial as well as cooperative telephone companies throughout the state who are presently being taxed on intangibles. He said they have \$100 million of invested plant, and are investing over \$50 million a year in the state. He said almost anything that isn't property is intangible, and only a select few companies in the state are paying that tax, which is then passed on to the consumers. So the choice is to tax everyone on these intangibles, which would be a tremendous burden, or to get rid of the tax. He said his companies strongly encourage passage of
SB 111.

Mike Strand, Executive Vice-President and General Counsel, Montana Independent Telecommunication Systems, said he represents independent rural telephone companies and rural telephone cooperatives. He said his organization supports this bill for many of the reasons already expressed. He said they feel it is fundamentally unfair for centrally assessed companies to pay this tax while other companies do not. He said either all companies should be taxed or none of them. He said taxing everyone for intangibles would open the floodgates for litigation as businesses argue over the value of their intangibles. He urged support for this bill.

Chris Gallus, Montana Chamber of Commerce, urged support for **SB 111**.

Riley Johnson, National Federation of Independent Businesses and Air Transport Association of America, said NFIB represents over 8,000 members, the majority of which would be affected by this legislation. He said ATA represents entities such as Delta Airlines, Northwest Airlines, UPS and Federal Express. He said these companies are concerned with fairness issues, and for all the reasons previously expressed, they support **SB 111**.

Opponents' Testimony:

Myles Eaton, Executive Director of the Business and Consumers Bureau of Montana, which is a Better Business Bureau-type operation. He said his organization is not basically opposed to **SB 111**, but only Section 1 (2) (h), licenses and permits. He said the Bureau would recommend the following change: "full liquor licenses" or some similar type wording, "are not to be exempt." The Montana Code calls for taxation of licenses. The Montana Department of Revenue has not taxed these licenses in the past even though required by law to do so. They advised that the reason is because they cannot establish a value of liquor licenses. These licenses are now going for between \$200,000 and \$300,000 and are considered assets for loan purposes. He provided a witness statement, **EXHIBIT (tas23a05)**.

Questions from Committee Members and Responses:

SEN. DEVLIN asked **Gene Walborn, Department of Revenue**, about water rights and mineral rights and how the owners of mineral rights could be located to send a tax bill to, and **Mr. Walborn** said that that was part of the problem, identifying those and establishing a value. **SEN. DEVLIN** asked about licenses and permits, and what that entails, and **Mr. Walborn** said that that refers to those licenses that can be bought and sold, that can change ownership.

Referring to the fiscal note, **SEN. GLASER** said that on the existing revenue stream, this represents a hit of over \$3 million at the state level, and a \$7.5 million hit on local government. He said that represents \$4.5 million to schools. He asked **SEN. DEPRATU** how that was going to be accommodated. **SEN. DEPRATU** said that he realizes that there is going to be a loss, but he said he felt that if this tax for intangibles was added to businesses, it would encourage business to exodus Montana, and the result could be an even larger hit than is reflected on the fiscal note.

SEN. GLASER asked the Department of Revenue if it would be possible to get more detailed information regarding the figures on the fiscal note so the committee could get a grasp on these numbers, and **Brian Smith, Department of Revenue**, said they could provide that information.

SEN. ECK then asked the Department of Revenue for the rationale for not taxing liquor licenses, especially since the auditors called that to the Department's attention a number of times. **Gene Walborn, Department of Revenue**, said the basic problem is not being able to capture that data on licenses. Liquor licenses are one of those types of property that should be captured. If this bill does not pass, the Department will go out and capture those liquor licenses.

SEN. ECK said she would like to know what has been done in other states and how intangibles are handled elsewhere, and **Mr. Walborn** said that most of our neighboring states are exempting intangible properties. He said they are a little bit different than Montana because in their Constitution and their law, intangibles are exempt, so they don't capture it at the local level but are capturing it in the centrally assessed. He said, however, that they are experiencing a lot of litigation in doing that. Montana is the other way around. **Mr. Walborn** said the Department would be able to provide what states are taxing intangibles presently and will put that together for the committee.

SEN. STANG said that most personal property that we tax in Montana has a purchase price or a value the day that it is purchased and then it depreciates in value so that the tax is on a declining balance, but it appears that liquor licenses are appreciating in value, and he wondered if there would have to be a different way to value liquor licenses on a yearly basis, or if they would be allowed to depreciate them. **Mr. Walborn** said he would value them yearly using market comparables, so each year they would get a new market value for that liquor license.

SEN. STANG asked why the fiscal note for **SB 274** indicates there is no fiscal impact because we are not presently collecting the tax, and this fiscal note indicates there is an impact even though we are not actually collecting the tax, and how it is determined that local governments will be impacted, because they are not currently getting any of this tax. **Mr. Walborn** said that that can be measured in this bill because, unlike **SB 274**, this represents what is being captured in centrally assessed property today. This does not attempt to value all the intangibles listed in this bill, but is only representative of the centrally assessed properties, which are paying tax on the intangible personal property.

SEN. STANG asked if he was correct in believing that there was a measure passed that said if a bill has a fiscal impact to the local governments and the legislature does not fund that, that the bill is not valid, and **Mr. Heiman** said that that is the unfunded liabilities to local governments. When the state puts a duty on local government, the state is required to pay for making them do that duty. If the state does not pay for it, then the local governments don't have to do the duty. In this case there is no duty being imposed on the local governments.

SEN. STANG asked if this does lower the revenue to local governments, it appears that those local governments will then have to, under the provisions of **CI-75** vote to bring that tax back up to pay for that, and he wondered why this bill does not have a **CI-75** companion bill. **SEN. DEPRATU** said he had not considered this in that text, and could not answer that question.

SEN. GLASER asked how many more of these bills which create tax exemptions for convenience will the legislature have to consider, and **Mr. Walborn** said that he hoped it was not for convenience, that hopefully it is an enforcement issue, and when situations such as this one do arise, the Department needs to take steps to enforce the compliance on everyone for that tax type. He said he hoped that there are not any more bills out there, but it is the desire of the Department to enforce the law fairly and equitably to everyone, and that is the crux of this bill.

SEN. EKEGREN asked what a liquor license would cost, and **Mr. Smith** said that the cost of a beer and wine license upon issuance is \$800. **SEN. EKEGREN** then asked what makes a liquor license so valuable, and **Mr. Smith** responded that there is a quota system which influences the value of these licenses.

SEN. ECK asked how many more categories are a part of this intangible property that have not been addressed, and **Mr. Hoffman, Department of Revenue**, said that he has worked in the

compliance area of the Department of Revenue for 23 years, and these sort of situations where the world is changing and how people do business causes gaps within our law, and the Department has always tried to identify those gaps so the playing field can be level. This is what this bill is doing. He said probably all the problems have not been corrected because they may not even have been identified yet, but if an issue arises that impacts the taxes we have in Montana, the Department tries to deal with that.

SEN. DEVLIN said at one time the only things that were taxed were the things that were listed in the law, then there was a change that said everything is subject to tax unless it is explicitly exempted, and he wondered when that change occurred. **Mr. Hoffman** said he did not know.

SEN. ELLIS asked **Mr. Feiss** why intangibles are taxed in centrally assessed companies, and **Mr. Feiss** said that centrally assessed utilities are taxed on a total value which includes intangibles.

SEN. ELLIS then asked **Mr. Hoffman** what it is that these companies have that is intangible that you can assess, and he said that it relates more to the methodology that the Department uses for centrally assessed companies. The Department values the unit as a whole and they do not assess the separate components.

SEN. ELLIS then asked specifically if T&E, a machinery company in Yellowstone County, would have an intangible presence if they had branch businesses throughout the state, and **Mr. Hoffman** said they may have an intangible presence, but they would not be valued under Montana law under the unit value of appraisal because they don't have continuous intercounty property. **SEN. ELLIS** asked if the Department of Revenue had been required to defend this taxing of intangibles, and **Mr. Hoffman** said that they had not.

SEN. ELLIS asked **SEN. DEPRATU** whether some of the intangibles listed in **SB 111** might have a certain value, and he said he believes that in the case of intangibles, you really do not know what the value is until a fair market transaction has taken place and cash changes hands.

Closing by Sponsor:

SEN. DEPRATU thanked the committee for a fair hearing and all of the questions to help clarify the bill. He noted the lack of opposition, with just one person opposing just one small part of the bill, and he urged a do pass.

Mary Bryson, Director, Department of Revenue, provided a memo regarding assessment of intangible property, **EXHIBIT (tas23a06)**.

NOTE: **CHAIRMAN DEVLIN** resumed the chair.

EXECUTIVE ACTION ON SB 270

Motion: **SEN. STANG** moved that SB 270 DO PASS.

Discussion:

SEN. BOHLINGER said he felt the opportunity for local government to be reimbursed for providing space to state government is only a question of fairness, and that he appreciated this bill.

SEN. STANG said that he had a concern about the Department of Revenue telling the counties that if they do not provide space for the Department, they will move their presence out of the county, and **SEN. DEVLIN** said he would explore the possibility of putting something in the bill to prevent that.

SEN. GLASER suggested that perhaps the fiscal note could reflect the distribution of the cost amongst other entities who also benefit from the presence of the Department of Revenue at a local level. **SEN. DEVLIN** said he thought that would be a complicated bill.

SEN. ELLIS said, in regard to **SEN. STANG'S** concern, that this is not an unreasonable rate and he felt the state is unlikely to "blackmail" county governments because they would have difficulty doing so except in a very few cases where rental space is very cheap, which is not often the case. He said he felt the fee was appropriate and that the committee should pass the bill. **SEN. STANG** replied that it may not necessarily be the Department of Revenue, but the Drivers License Bureau and others. He said that in the smaller counties it is sometimes a problem that arises where the state simply says if they have to pay rent, they will move the offices to a larger city farther away and the local residents can drive there to take care of their business.

CHAIRMAN DEVLIN said that he did not think that there is a requirement for the state to rent from the county, that they can rent from anyone.

SEN. ECK said that county government works with that office presently and she believed that they would be reasonable and would not try to take advantage of the state. She said that it is not fair that in some counties the Department pays, and in others they rely on the goodwill of the county. She said she liked the bill.

SEN. EKEGREN said he did not think the state would move out. It is a matter of goodwill that they stay.

Vote: Motion passed 9-0.

EXECUTIVE ACTION ON SB 205 AND SB 206

CHAIRMAN DEVLIN said he had an amendment to **SB 206**, which is the the aircraft fuel tax bill, **EXHIBIT(tas23a07)**. He said the amendment has to do with the language in the question to the people.

Motion: SEN. STANG moved SB020601.ALH DO PASS.

Discussion:

SEN. STANG said it appears that this amendment takes care of the question of whether this tax was just going to be used for pavement projects, and this adds "aeronautical functions," which should take care of that.

Vote: Motion carried 9-0.

Motion/Vote: SEN. STANG moved SB 206 DO PASS AS AMENDED. Motion carried 9-0.

Motion: SEN. GLASER moved that SB 205 DO PASS.

Discussion:

SEN. GLASER said that **SB 205** is a small increase in tax, and the people affected by the tax came in and asked for it and said they would support it in the election cycle.

CHAIRMAN DEVLIN said there was some discussion by the refinery representative wanting some changes in the bill, and he has not approached anyone for an amendment.

SEN. DEPRATU said that person had some concerns about being one cent out of sync as far as his bidding process, but in talking with the sponsor and looking at some state law, apparently there is some ability to get some refund of the tax, and he recommended that the committee deal with the bill as written.

SEN. ELLIS said that he had the impression from someone that when the federal government agrees to that, they do it prior to taxes and then the taxes are added on so that the taxes that they pay on federal aviation fuel are not considered in the bidding process. **CHAIRMAN DEVLIN** said that the last he had heard was that the federal government was only interested in the bottom line. He said they make the bidders list the tax separately, but

the bids are let on the bottom line, so the taxes are included in the end result of the bid.

SEN. DEPRATU said he agrees with what **CHAIRMAN DEVLIN** has said about that. He said that in the last few years, the federal government has changed their procedure, and it is now considered on a net bid and there is no refund from the federal government.

SEN. BOHLINGER said that according to his notes, 18 people came forward to speak as proponents for this bill, all of whom are people who would be paying the increased tax. He said they cited the need for maintaining runways and the airports around our state, and as things age, they have to be maintained, and costs are increasing. He said he supports this bill.

Vote: Motion carried 9-0.

EXECUTIVE ACTION ON SB 208

Discussion:

CHAIRMAN DEVLIN said that he thought this bill needed an effective date, and **Mr. Heiman** said that it should have an effective date with a date of applicability so that it will apply to all taxes collected after a particular date to prevent a problem of it running backwards six or eight years. He suggested that it be added at the beginning of the next tax year, which would be applicable to taxes collected, for instance, after December 31, 1999.

SEN. GLASER said he thought the Department of Revenue's concern was that they cannot move the paper this fast and they cannot get it through the bank this fast, and there is probably some logic to that. He agreed that the Department should expedite it as much as possible, but the way the bill is written, it may be unworkable because of the time involved.

SEN. DEPRATU said he concurred with **SEN. GLASER**, and knowing how bank funds are transferred, even if the Department was physically able to get the checks deposited on that day, it would create a negative cash flow for the state because in most cases those checks would not have a collected value in the state account in actual cash for up to three days.

SEN. GLASER said the fiscal note indicates that they have no idea what the financial impact is of this piece of legislation.

SEN. BOHLINGER said he had a problem with line 13 of the bill where it indicates the interest rate of 12% a year, which he felt is excessive in today's money market.

SEN. ECK said she did not think this bill can be passed without having considerable work done on it, and since the committee has not had any substantive amendments, she recommended putting it aside or tabling it until amended.

Motion/Vote: **SEN. ELLIS** moved that SB 208 BE TABLED. Motion carried 8-1 with Stang voting no.

EXECUTIVE ACTION ON SB 175

Motion: **SEN. ECK** moved SB017501.ALH, **EXHIBIT**(tas23a08).

Discussion:

SEN. ECK said this is an amendment that the Department of Revenue needs in order to do a fiscal note which amounts to saying that university employees are state employees. She said that was related to the tax credit for children's health insurance.

CHAIRMAN DEVLIN said he wanted to do a little more research on this than what he has been able to do.

SEN. ECK said she was not asking the committee to vote on the bill, she just thinks that before the committee considers this bill again, they should have a new fiscal note. It had been assumed that it was only the state insurance, but it will also be university.

CHAIRMAN DEVLIN asked if this would clarify it enough for the Department to come up with another fiscal note, and **SEN. ECK** said it would.

Vote: Motion carried 9-0.

Motion/Vote: **SEN. STANG** moved that SB 175 AS AMENDED BE TABLED. Motion carried 9-0.

ADJOURNMENT

Adjournment: 10:50 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas23aad)